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1. Corporations organized under laws of Minnesota, not for charitable or eleemosynary purposes but for pecuniary advantage of shareholders, *held*, "organized for profit" within meaning of Corporation Tax Act of Aug. 5, 1909. *Von Baumbach v. Sargent Land Co.* . . . . . 503
2. Corporation which has not reduced activities to owning and holding property and distribution of its avails, but maintains organization for continued efforts in pursuit of profit and for such activities as are therein essential, is carrying on business within meaning of act. *Id.*
3. Decision whether corporation is carrying on business within meaning of act must depend in each instance upon particular facts before court; no particular amount of business required. *Id.*
4. Depletion of a mine resulting from removal of ore in course of operation, not "depreciation of property" for which deduction may be made under act. *Id.*

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5. Rents or royalties derived from " mining leases " held not converted capital but income. *Id.*

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2. District Judge may not refuse sentence on proper verdict. *Id.*

3. Parol System within power of Congress. *Id.*

4. Common-law powers to indefinitely suspend or refuse sentence on proper verdict not in courts. *Id.*

5. *Semble*, Courts have inherent power to delay or recall sentence for proper enforcement of law, or in aid of pardoning power. *Id.*

6. A " motion to quash " based upon former adjudication that previous indictment for same offense was barred by statute of limitations, *held*, in substance, a plea in bar. *United States v. Oppenheimer* ..... 85

7. A plea of the statute of limitations is a plea to the merits and judgment that prosecution is barred goes to defendant's rights in substantive law. *Id.*

8. Such a judgment is a conclusive bar to second prosecution for same offense. *Id.*

9. When a demurrer is filed between plea and arraignment without withdrawing plea, and jury is sworn, court in its discretion may dismiss jury, decide demurrer, and, overruling it, rearraign defendant and swear same jury again. *Lovato v. New Mexico* ..... 199

10. Silence of accused on certain points may give rise to inferences against him when he voluntarily testifies on others, and court may so instruct jury. *Caminetti v. United States* .. 470

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11. While better practice in criminal cases for courts to caution juries against too much reliance on testimony of accomplices and against believing such testimony without corroboration, mere failure to give such an instruction is not reversible error. *Id.*

**DAMAGES.** See **Carriers**, 4, 6, 8; **Employers' Liability Act**, 13, 14; **Interstate Commerce Acts**, 1, 8, 9, 17, 20, 21, 24, 27.

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improvements requires no compensation if contemplated by railroad's charter obligations. *Lake Shore &c. Ry. v. Clough*.. 375

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**EMPLOYERS' LIABILITY ACT:**

1. The return part of round trip train service is not given interstate character by facts that interstate commerce is carried outbound and the service mainly devoted to it. *Illinois Cent. R. R. v. Peery*..... 292

2. Making up conductor's report on such return trip not employment in interstate commerce. *Id.*

3. Not intrastate character of moving car but purpose of movement of it in which employee is injured determines whether he is engaged in interstate commerce. *Louis. & Nash. R. R. v. Parker*..... 13

4. On conflicting evidence, purpose of a car movement is for jury, and benefits of the act may be waived if party does not ask to have it so determined. *Id.*

5. To gain benefits of act in state court, party must claim them in proper time and way under state procedure. *Atlantic Coast Line R. R. v. Mims*..... 532

6. When state court applies the federal act to action governed by state law, the error is not ground for reversing judgment upon complaint of party who did not oppose but invoked and relied upon application of the federal act. *Minneapolis & St. Louis R. R. v. Winters*..... 353

7. In such circumstances, however, this court will not pass upon questions concerning negligence and assumption of risk if facts touching plaintiff's employment are stated and agreed and fail to make case within federal act. *Id.*

8. In absence of clear error concurrent findings of state courts on sufficiency of evidence concerning negligence, assumption of risk and employment in interstate commerce will not be disturbed. *Balt. & Ohio R. R. v. Whitacre*..... 169  
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9. Injury occurred while plaintiff was repairing engine which had been used in interstate commerce before injury and was so used afterwards, but there was nothing to show that it was permanently or specially devoted to such commerce, or assigned to it at the time. *Held*, not a case within the act. *Minneapolis & St. Louis R. R. v. Winters* ..... 353

10. Essential that person injured be employed at time of injury in some task of interstate commerce; mere expectation of such employment not enough. *Erie R. R. v. Welsh* ..... 303

11. Employee, subject to be employed in either interstate or intrastate commerce as directed by superior, was injured while in quest of orders, and, but for injury, would have received orders requiring him immediately to make up interstate train. *Held*, not interstate commerce. *Id.*

12. Defenses of contributory negligence and assumption of risk eliminated when proximate cause of injury is physical exhaustion attributable to violation of Hours of Service Act. *Balt. & Ohio R. R. v. Wilson* ..... 295

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13. Pain and suffering substantially contemporaneous with death or mere incidents to it, and short periods of insensibility intervening between fatal injuries and death, afford no basis for separate estimation or award of damages under the act as amended Apr. 5, 1910. *Great Northern Ry. v. Capital Trust Co* ..... 144

14. When personal representative unites claim for injury suffered by decedent with claim for losses resulting to beneficiaries from his death, damages recoverable under former claim are limited to such as reasonably compensate for loss and suffering of injured person while he lived; error to permit jury to increase them by taking account of his premature death and of what he would have earned or accomplished in natural span of his life. *Id.*

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**EXECUTORS AND ADMINISTRATORS:**

1. At common law executors have implied authority to pass title to personal assets of the estate—a rule which has not been modified in Wisconsin. *Williams v. Cobb*. . . . . 307

2. A transfer of bank shares by an executor to himself as testamentary trustee passes title whether authorized or not. *Id.*

3. The rule that personal estate has situs at decedent's domicile and is subject to administration and distribution according to domiciliary law, is but a common-law rule which each State may alter to suit its own policy. *Baker v. Baker, Eccles & Co*. . . . . 394

4. Power of States to administer and distribute local assets such as debts, and shares of local corporations. *Id.*

**FEDERAL EMPLOYERS' LIABILITY ACT.** See **Employers' Liability Act**.**FINDINGS OF FACT.** See **Practice and Procedure**, V.**FOOD LAWS.** See **Constitutional Law**, 75-77.

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1. Grantee has benefits flowing from logical application of a strict construction. *Detroit United Ry. v. Michigan* . . . . . 238
2. Ordinances fixing fares on all lines within a city *held* not to include lines subsequently acquired by street railway company within territory subsequently annexed to city. *Id.*
3. Granted by Congress to bridge navigable streams subject to strict construction as to alteration or repeal. *Louisville Bridge Co. v. United States* . . . . . 409
4. License to use street for railway track not irrevocable though long enjoyed. *Seaboard Air Line Ry. v. Raleigh* . . . . . 15
5. What seems on its face a mere license by a municipality may not be converted into a contract by resort to general implications. *Id.*
6. Apparent license to corporation implied into contract only when essential to the corporate duties and powers. *Id.*
7. A franchise obligation to reconstruct over water courses, may require railway company to bear inconvenience and expense resulting from state drainage improvements crossing line and interfering with old bridges. *Lake Shore &c. Ry. v. Clough*. . . . . 375
8. When under franchise obligation to carry both passengers and freight, on branch line, carrier cannot escape as to passengers by devoting branch to freight only. *Ches. & Ohio Ry. v. Public Service Comm.* . . . . . 603
9. Pecuniary loss is not *per se* an excuse for not performing franchise obligation to carry passengers as well as freight. *Id.*
10. What amounts to joint ownership of terminal facilities. See *Louis. & Nash. R. R. v. United States* . . . . . 60

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1. It is constructive fraud for member of "syndicate," formed to buy up shares of a corporation, when acting for the other members in the purchase, secretly to turn in shares of his own applying them on his subscription to the "syndicate."  
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2. Such fraud entitles other members to rescind; they may sue the agent for the amounts they entrusted to him, tendering him the shares they received in return. *Id.*

**FRAUDULENT CONVEYANCE.** See **Bankruptcy Act**, 5-7.**GARNISHMENT.** See **Contracts**, 3.

1. Under the statutes of Connecticut, garnishment of deposits in ordinary savings bank without stockholders subject to a fiduciary duty to hold and invest for benefit of depositors all funds that it receives and to pay over to them net income beyond enough to constitute a small safety fund (Gen. Stats., §§ 3440, 3441), reaches not only principal of the deposits but also the dividends that accrue after service of the writ. *Savings Bank of Danbury v. Loewe*. . . . . 357
2. The lien is not affected by an assignment of the savings accounts made after the service. *Id.*

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**INDIANS:**

1. Sections 19 to 21 of Act of July 1, 1902, allowing until Sept. 25, 1902, within which to reduce excessive enclosures and holdings, were not intended to permit revival of dormant claims to prejudice of persons entitled to allotments who had entered into possession and made valuable improvements. *Hill v. Reynolds* ..... 361
2. The provisions of §§ 17 and 18 of Act of June 28, 1898, inhibiting enclosures and holdings in excess of allottable quantities, were left in force as to Choctaws and Chickasaws by agreement in § 29 which became effective through tribal ratification Aug. 24, 1898. *Id.*
3. A widow may act for herself and minor children in relinquishing to another their excess possessory rights and improvements, and their grantee, maintaining the possession and increasing the improvements, has prior right of selection over junior vendee of children and guardian. *Id.*
4. An agreement among Indians holding possession and improvements, that one shall have part of the land for allotment, may suffice to give interest in improvements thereon supporting preferential right of selection under § 11 of the 1902 Cherokee Agreement. *Harnage v. Martin* ..... 386
5. Of two qualified applicants for allotment under § 11 of the Cherokee Agreement of 1902, the one owning improvements on tract, though junior in time of application, is entitled to prevail. *Id.*
6. A substantial equity in improvements will suffice to hold tract against claimant whose interest in them is *nil*. *Id.*

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7. A decision of Secretary of the Interior that one of two contesting claimants of allotment under § 11 of Cherokee Agreement, *supra*, was owner of improvements, is conclusive, unless made without evidence or otherwise result of error of law. *Id.*

8. Section 18 of Cherokee Agreement of 1902 recognized in terms right of tribal member to hold possession by agent as well as by himself of land not exceeding allottable quantity. *Id.*

9. An Indian who buys improvements and bases on them a selection of allotment, is not prejudiced by later proceedings in court and before Commissioner of the Five Civilized Tribes, for sale of improvements, if not a party. *Id.*

10. Issuance of fee simple patent for allotment in White Earth Indian Reservation, Minnesota, under clause of Act of Mar. 1, 1907, which declares that such allotments when held by adult mixed-bloods shall be free of restrictions on alienation and patentable in fee, implies finding that patentee was of age when patent issued. *Dickson v. Luck Land Co.* . . . . . 371

11. While this finding is decisive of allottee's age for purpose of sustaining his right to title freed from the restrictions which Congress had imposed by allotting acts, it does not conclusively establish his majority for purpose of determining whether deed of the land which he made after patent was subject, under state law, to disaffirmance as deed made in infancy. *Id.*

12. The restrictions being removed and fee patent issued, allottee, pursuant to Act of May 8, 1906, becomes subject to, and entitled to benefit of, laws of State governing transfer of real property, fixing age of majority and declaring disability of minors. *Id.*

13. At date of Treaty of Greenville, Aug. 3, 1795, 7 Stat. 49, right of Pottawatomie Nation in lands on and near shore of Lake Michigan now in Illinois was no more than right of occupation. *Williams v. Chicago.* . . . . . 434

14. If the occupancy ever extended to lands formerly submerged in lake, the court notices historically that it was long ago abandoned and that for more than half a century no pretense of such occupancy has been made by tribe. *Id.*

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15. The treaty did no more than confirm tribal right of occupancy, and when that was abandoned all interest of tribe and members terminated. *Id.*

**INFANCY.** See **Indians**, 3, 10-12.

**INJUNCTION:**

1. When patent rights have been infringed and sound reason exists for believing infringement may be resumed, the case is remediable in equity by an injunction, with an accounting for past profits. *Goshen Mfg. Co. v. Myers Mfg. Co.* ..... 202

See **Patents for Inventions**.

2. When statute regulating complainant's business is alleged to be unconstitutional and its effect, if business be continued in disregard of it, will be to visit him with repeated criminal prosecutions involving heavy fines and imprisonment, the remedy at law is not adequate. *Caldwell v. Stock Yards Co.* ... 559

3. A suit to enjoin state officials from instituting criminal proceedings in enforcement of such a statute is not a suit against State. *Id.*

4. Decree of injunction may be reversed and suit dismissed when case becomes moot because of legislation pending appeal. *Berry v. Davis* ..... 468

5. Correctness of refusal of state court to enjoin state action touching interstate commerce tested by federal laws then in force. *Vandalia R. R. v. Public Service Comm.* ..... 255

6. Whether party should have injunction to permit continual shipping of liquor into State may depend on condition of law as it develops by time of decision by this court. *Clark Distilling Co. v. Western Maryland Ry.* ..... 311

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- error in refusing not cured by generalities in charge. *Pennsylvania R. R. v. Jacoby & Co.* ..... 89
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See 27, *infra*.

2. May determine validity of carriers' rule of car distribution for past transactions as well as future. *Pennsylvania R. R. v. Stineman Coal Co.* ..... 298

3. Action against interstate carrier for damages caused by unfair and discriminatory departures from rule of car distribution in times of car shortage may be prosecuted in a federal or state court (§ 22); remedy by §§ 8 and 9 not exclusive. *Pennsylvania R. R. v. Sonman Coal Co.* ..... 120

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5. Commission may require carriers owning joint terminal if they switch non-competitive goods to switch competitive also upon being paid reasonable compensation, taking into account cost of terminal. <i>Louis. &amp; Nash. R. R. v. United States</i>	60
6. No question of discrimination being involved, the Commission may not compel carrier to furnish tank cars as part of its equipment. <i>United States v. Pennsylvania R. R.</i>	208
7. Neglect or refusal to furnish tank cars not a "practice" within meaning of § 15, as amended June 18, 1910. <i>Id.</i>	
8. In action to enforce award of damages, Commission's finding may be combatted before jury by documentary evidence which was before the Commission but which tends to prove that finding was based on erroneous theory of law. <i>Pennsylvania R. R. v. Jacoby &amp; Co.</i>	89
9. In such case fact that evidence before Commission is not all before court may not justify controlling presumption that award was properly made on competent proofs. <i>Id.</i>	
10. Power of Commission, under § 4, as amended June 18, 1910, not limited to granting or denying <i>in toto</i> relief applied for by carrier; but whenever, following such an application, Commission has considered special circumstances affecting the carrier in its relations to that section, it may exercise broad administrative discretion in determining from time to time the relief which such carrier should receive. <i>United States v. Merchants &amp;c. Assn.</i>	178
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12. In a proceeding under § 4, as amended, Commission represents public and carrier is only necessary party; interested communities and shippers, though customarily heard, need not be notified, and, at least in the absence of participation, are not bound. <i>Id.</i>	
13. Shippers or communities injured by discrimination or unreasonable rates in tariffs filed pursuant to orders made under amended § 4 have remedy, not in applying for rehearing of proceedings, but by direct applications to Commission for relief under §§ 13 and 15. <i>Id.</i>	

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14. That part of amended § 4 providing that rates reduced in competition with water routes shall not be increased unless Commission finds reason in changes of conditions other than elimination of water competition, has no application to case in which complaint is based on difference of rates; in which elimination of water competition is denied by parties complaining; and in which change complained of was part of general readjustment of transcontinental rates made necessary by increase of water competition and authorized by Commission after prolonged hearings. *Id.*

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16. When a carrier in published tariffs denies obligation to furnish tank cars, fact that it publishes rates for commodities so carried may not be construed as an offer, constituting a duty, to furnish such cars; and finding by Commission to contrary is reviewable as conclusion of law. *United States v. Pennsylvania R. R.* ..... 208

17. In computing damages resulting from discrimination in car allotments, error to assume that shipper should have received cars in same ratio to shipping requirements as was allowed favored competitor. Award should be based on damages actually resulting from discrimination. *Pennsylvania R. R. v. Jacoby & Co.* ..... 89

18. Duty of carrier to furnish cars for coal to be loaded at mine and forwarded promptly for delivery to purchasers in other States is duty in interstate commerce, notwithstanding sale of coal is f. o. b. at mine. *Pennsylvania R. R. v. Sonman Coal Co.* ..... 120

19. When conditions are normal, carrier upon reasonable demand must furnish sufficient cars to satisfy actual needs of shipper's business. The duty exists under the common law and Hepburn Act. *Id.*

20. Right to sue in state or federal courts for damages arising from breach of carrier's duty to supply cars is preserved by § 22; the remedy provided by §§ 8 and 9 not being exclusive. *Id. Pennsylvania R. R. v. Stineman Coal Co.* ..... 298

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23. Upon question whether law in respect of filing schedules to correspond with ticket stipulations has been complied with, carrier is entitled to presumption that its business is being rightly conducted. *Id.*
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- For construction of contract respecting damages, see **Carriers**, 8.
25. A carrier which holds goods stored while *in transitu*, under tariff allowing shipper privilege of storage and diversion, liable as carrier and not as warehouseman. *Id.*
26. Under § 6 separate tariff must be filed when privileges of storage and diversion are offered which are not specified in general tariff. *Id.*
27. When damages have been awarded by Commission under §§ 8, 9 and 16, and satisfied, further damages may not be recovered in court. *Louis. & Nash. R. R. v. Ohio Valley Tie Co.* 288
28. Where carrier's rule is found discriminatory by Commission, shipper though not party before Commission, cannot recover from carrier for its failures to obey rule before finding was made. *Pennsylvania R. R. v. Stineman Coal Co.* ..... 298
29. Carriers owning terminal facilities jointly not obliged by § 3 to allow use of them to another. *Louis. & Nash. R. R. v. United States* ..... 60
30. Refusal of joint owners of terminals to switch for another carrier not unlawful discrimination against latter. *Id.*
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35. Order of state commission fixing rate for transportation in purely intrastate commerce will not be disturbed upon grounds that it produces discrimination against interstate commerce, interferes with administrative provisions of Interstate Commerce Act, and intrudes upon jurisdiction of Interstate Commerce Commission, where relations of rate fixed to interstate commerce have not been determined by Interstate Commerce Commission and are not established by evidence, and where certainty that it will operate to injury of those engaged in such commerce is not made to appear. *Chicago, Mil. & St. P. Ry. v. Public Utilities Comm.* . . . . . 333

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1. Orders of state court in lunacy proceedings, finding insanity and appointing committee are not open to collateral attack because respondent is committed at the time to private asylum and does not appear, if he is served with notice, is physically able to come, and makes no effort to appear in person or through another. *Chaloner v. Sherman* . . . . . 455



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2. Such orders are not assailable collaterally by proof that respondent was and remained citizen of another State, or was served in proceedings through being corruptly lured into first State and there illegally committed to private hospital, or that adjudication of insanity was made on perjured evidence while he was actually sane, or that sanity and competency have been established by later adjudication of court of his domicile and have since continued. *Id.*

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1. The court judicially notices coincidence in time with Civil War of certain acts of Congress; lack of bridges over the Ohio at Cincinnati, Louisville, and points west; natural difficulties of crossing the stream; urgent need of bridge to transfer troops and supplies south; and fact that financial disturbances made it difficult to secure capital for large undertakings. *Louisville Bridge Co. v. United States*. . . . . 409
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10. May mandamus District Judge to impose criminal sentence. *Ex parte United States* . . . . . 27
11. Will dismiss writ of error based on frivolous constitutional propositions. *Gasquet v. Lapeyre* . . . . . 367
12. May not pass upon expediency or adequacy of legislation. *Merrick v. Halsey & Co.* . . . . . 568

(2) *Over Circuit Courts of Appeals.*

13. None by writ of error to judgment of Circuit Court of Appeals in case presenting neither diversity of citizenship nor federal question, taken to that court upon basis of pecuniary amount from Supreme Court of Hawaii, pursuant to Jud. Code, § 246, as amended Jan. 28, 1915. *Inter-Island Steam Nav. Co v. Ward* . . . . . 1

**JURISDICTION**—*Continued.***PAGE**(3) *Over District Courts.*

14. May compel execution of criminal sentence by mandamus.  
*Ex parte United States*..... 27

15. A direct writ of error lies, under Jud. Code, § 238, to test jurisdiction of District Court over person of the defendant.  
*Stewart v. Ramsay*..... 128

16. Under Criminal Appeals Act, the right to review a judgment sustaining special plea in bar is not limited to cases in which decision is based on the invalidity or construction of statutes upon which indictment is founded. *United States v. Oppenheimer*..... 85

(4) *Over Supreme Court of District of Columbia.*

17. A decree of the Supreme Court of the District of Columbia refusing to adjudicate defendant a bankrupt is not directly reviewable in this court. *Swift & Co. v. Hoover*..... 107

18. Under § 24 of Bankruptcy Act and § 252 of Jud. Code, only controversies arising in bankruptcy proceedings, and not steps taken in the proceedings themselves, afford basis for direct appeal to this court from Supreme Court of District of Columbia. *Id.*

19. *Quære*: Whether Congress has omitted to provide for appellate review of bankruptcy adjudications of Supreme Court of District of Columbia? *Id.*

(5) *Over Judgments of State Courts.*

20. Claim that State may not subject private detectives and detective agencies to police supervision, require bond, etc., not frivolous. *Lehon v. Atlanta*..... 53

21. To confer jurisdiction under Jud. Code, § 237, a claim of federal right must be set up in apt time and way under state procedure. *Atlantic Coast Line R. R. v. Mims*..... 532

22. On whether this was done, state court's decision is binding, if it is not evasive. *Id.*  
 See also *O' Neil v. Irrigation Co*..... 20

23. Whether proceedings to forfeit a land contract for default are governed by law of the *situs* or law of the place of making and performance is question of local common law with which

**JURISDICTION—Continued.**

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this court is not concerned in a case coming from a state tribunal. *Kryger v. Wilson*..... 171

24. When state law is said to impair a contract, this court determines, upon its independent judgment, the existence of contract, the obligations under it, and whether the latter are impaired by operation of subsequent law. *Detroit United Railway v. Michigan*..... 238  
*See Long Sault Development Co. v. Call*..... 272  
*Seton Hall College v. South Orange*..... 100

25. When highest state court has refused to exercise discretion to review judgment of intermediate appellate tribunal, it is to the latter that writ of error under Jud. Code, § 237, should be directed. *Second National Bank v. First National Bank*.. 600

26. Ohio Court of Appeals affirmed judgment of Superior Court of Cincinnati, upon record coming from latter, and ordered that court "to carry this judgment into effect," without directing it to enter any judgment of its own. Held, that writ of error under § 237 should have been directed to Court of Appeals and not to Superior Court. *Id.*

27. In criminal case tried in District Court of Territory and coming here by way of Supreme Court of State into which Territory was afterwards converted, defenses based on Fifth and Sixth Amendments (in part not raised until case reached the latter court) are within this court's jurisdiction to consider. *Lovato v. New Mexico*..... 199

(6) *Over Judgment of Territorial Courts.* See 13 and 27, *supra*.

**III. Jurisdiction of District Court.**

28. None to refuse to impose sentence on proper verdict of guilty. *Ex parte United States*..... 27

29. Has discretionary power over sentences consistent with due enforcement of penal laws as enacted by Congress. *Id.*

30. Sitting in one State cannot acquire personal jurisdiction over citizen and resident of another through process served upon him while in attendance as plaintiff and witness. *Stewart v. Ramsay*..... 128

31. Suits to enforce claims on assets of bankrupt estate may be brought in the court of administration only. *Knauth, Nachod & Kuhne v. Latham & Co*..... 426

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**IV. Jurisdiction of Court of Private Land Claims.**

32. Derived wholly from Act of Mar. 3, 1891, which created it. *La Joya Grant v. Belen Land Grant* . . . . . 595

33. The court has no jurisdiction even by consent of parties to extend survey and decree over grant previously confirmed by Congress and patented. *Id.*

**JURY.** See **Instructions to Jury; Constitutional Law**, 49-52.

1. Whether a car movement is for a purpose of interstate commerce may be question for jury, and party may waive benefits of Federal Employers' Liability Act by neglecting to have it so determined. *Louis. & Nash. R. R. v. Parker* . . . 13

2. Whether safety appliances comply with act of Congress may be question for jury. *Atlantic City R. R. v. Parker* . . . . 56

**LAND CLAIMS, Private.**

See **Jurisdiction**, IV.

**LANDS.** See **Indians**.

**LEASE:**

Mining leases on royalty basis considered. *Von Baumbach v. Sargent Land Co.* . . . . . 503

**LICENSE.** See **Constitutional Law**, 28, 32, 37, 66, 71, 75-80, 87-91; **Franchise**.

**LIEN.** See **Bankruptcy Act**, 5-7; **Contracts**, 3; **Garnishment**.

**LIMITATIONS.** See **Criminal Law**, 6-8.

On action to establish water priority in Colorado. *O'Neil v. Irrigation Co.* . . . . . 20

**LIVE STOCK:**

Uniform contract conditioning carrier's liability for loss. See **Carriers**, 4.

**LUNACY PROCEEDINGS:**

Due process in and collateral attack upon. *Chaloner v. Sherman* . . . . . 455

**MANDAMUS:**

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1. Proper remedy to enforce imposition of sentence by District Judge. *Ex parte United States*..... 27

2. Should be directed to judge, not clerk. *Id.*

**MEDICINE:**

Regulation of practice. See *Crane v. Johnson*..... 339

*McNaughton v. Johnson*..... 344

**MINES. See Corporation Tax Act.**

On nature of "mining leases." *Von Baumbach v. Sargent*

*Land Co.*..... 503

**MISTAKE:**

In report by carrier. See **Interstate Commerce Acts**, 33.

**MOOT CASES. See Practice and Procedure, VI.****MORTGAGE. Fraudulent. See Bankruptcy Act, 5-7.****MOTION TO QUASH. See Criminal Law, 6.****MUNICIPALITIES. See City Ordinances.**

Ordinances regulating street car fares. *Detroit United Ry. v.*

*Michigan*..... 238

Granting license for railway spur. *Seaboard Air Line Ry. v.*

*Raleigh*..... 15

Regulating private detectives. *Lehon v. Atlanta*..... 53

Regulating bill-boards. *Cusack Co. v. Chicago*..... 526

**MUSICAL COMPOSITION. See Copyright Act.****NATIONAL BANKS:**

1. Are shares "interest bearing securities"? *Williams v.*

*Cobb*..... 307

2. Shares non-assessable against decedent's estate when executor, though without authority, has transferred them to himself as trustee. *Id.*

**NATURALIZATION ACT:**

Clerk may not charge fees against United States for making copies of declarations of intention and attaching seals at direction of Bureau. *Cross v. United States*..... 4

**NEGLIGENCE.** See **Employers' Liability Act**, 7, 12. PAGE

**NONRESIDENTS.** See **Constitutional Law**, 78, 79, 82, 85, 91;  
**Service of Process.**

**NOTICE.** See **Constitutional Law**, XI; **Judicial Notice.**  
Of interstate tariffs. See **Interstate Commerce Acts**, 15.

**"OPTOMETRISTS."**

State regulation of. See *McNaughton v. Johnson* ..... 344

**ORDINANCES.** See **City Ordinances; Municipalities.**

**OWNERSHIP.**

Joint, of terminal facilities. *Louis. & Nash. R. R. v. United States* ..... 60

**PAIN AND SUFFERING.** See **Employers' Liability Act**, 13.

**PARDONING POWER.** See **Constitutional Law**, 16.

**PAROL LAWS:**

Congress may adopt. *Ex parte United States* ..... 27

**PARTNERS:**

Individually responsible for torts committed by firm while acting within general scope of business, whether they personally participate therein or not. *McIntyre v. Kavanaugh* .. 138

**PASSENGERS.** See **Constitutional Law**, 30.

**PATENTS FOR INDIAN ALLOTMENTS.** See **Indians**, 10.

**PATENTS FOR INVENTIONS:**

1. The rule giving conclusive effect to finding by judge who saw the witnesses where finding depends on conflicting testimony or credibility, is peculiarly applicable in case wherein patent is assailed by oral evidence of alleged unpatented anticipation. *Adamson v. Gilliland* ..... 350

2. One who opposes patent by oral evidence of prior discovery must prove his case beyond reasonable doubt. *Id.*

3. When defendant retains junior patent under which he has infringed, denies plaintiff's rights under senior patent and

**PATENTS FOR INVENTIONS—Continued.**

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otherwise manifests hostility, fact that he has suspended business before suit does not debar relief by injunction and accounting against him. *Goshen Mfg. Co. v. Myers Mfg. Co.* . . . 202

4. Patent sustained over prior art for process extracting mineral by admixture of oil and water with ore pulp and special agitation, causing air bubbles which attach to metallic particles and buoy them to surface. *Minerals Separation v. Hyde.* . . . . . 261

5. Persuasive evidence of invention that process came immediately into general use and largely replaced all earlier like processes without aid of puffing or business exploitation. *Id.*

6. Those who plan experiments and direct and control investigation are not to be denied benefit of resulting discovery because made immediately by employee. *Id.*

7. Particularity and certainty of disclosure required is not greater than reasonable, having regard to the subject-matter. *Id.*

8. Any variation from process disclosed in patent must come within claims to constitute infringement. *Id.*

**PERSONAL INJURIES.** See **Employers' Liability Act; Safety Appliance Act.**

**PLEA IN BAR.** See **Criminal Law, 6-8.**

**PLEADING.** See **Criminal Law, 6.**

1. Where there is enough in pleadings to present issue of fraud, and issue is fully tried and variance only claimed on appeal, decree based on fraud will not be disturbed. *Dean v. Davis.* . . . . . 438

2. To fix trust on specific personal property on ground that it represents money procured by fraud, bill must trace money into property by apt, specific averments. *Knauth, Nachod & Kuhne v. Latham & Co.* . . . . . 426

**PLEDGOR AND PLEDGEE.** See **Bankruptcy Act, 4.**

**POLICE POWER.** See **Constitutional Law, XI, (2).**



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Appeals from. See **Jurisdiction**, 13.

**PRACTICE AND PROCEDURE.** See **Cause of Action**; **Constitutional Law**; **Jurisdiction**.

**I. Affirmance by State Court.**

1. Judgment of trial court should not be affirmed on new ground in such manner as to deprive party of opportunity to introduce evidence supporting claim of federal right. *New York Central &c. R. R. v. Beaham* ..... 148

**II. Saving Points in Trial Court.**

2. On conflicting evidence, the purpose of a car movement is for jury, and benefits of Federal Employers' Liability Act may be waived if party does not ask to have it so determined. *Louis. & Nash. R. R. v. Parker* ..... 13

3. To gain benefits of that act, party must claim them in proper time and way under state procedure. *Atlantic Coast Line R. R. v. Mims* ..... 532

4. A party who insists on application of Federal Employers' Liability Act in state court can not urge the ruling in his favor as ground for reversal by this court. *Minneapolis & St. Louis R. R. v. Winters*: ..... 1 ..... 353

5. A decree avoiding mortgage as fraudulent will not be disturbed upon ground that it exceeds pleadings where bill, though attacking the transfer mainly as unlawful preference, contains enough with answer to present issue of fraud, where that issue was fully tried, and question of variance is first raised in this court. *Dean v. Davis* ..... 438

**III. Scope of Review.**

6. Although an error not challenged in state court may not be relied on here as a ground of reversal, it is proper for this court to point it out in anticipation of a possible new trial. *Great Northern Ry. v. Capital Trust Co* ..... 144

7. Where state court erroneously assumes Federal Employers' Liability Act applicable to case this court will not pass on questions of negligence and assumption of risk. *Minneapolis & St. Louis R. R. v. Winters* ..... 353

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8. In such case it will simply affirm judgment if party complaining induced state court to apply federal act. *Id.*
9. In passing on validity of state statute, this court looks to its application to the particular case and will not anticipate construction which may never be given by highest court of State. *Chicago &c. Ry. v. Anderson* . . . . . 283

**IV. Following State Construction.**

10. Although on a question of commercial law or general jurisprudence federal courts exercise their own judgment, they nevertheless lean toward agreement with state courts where question is balanced with doubt. *Sim v. Edenborn* . . . 131
11. In determining whether there is a contract impaired by subsequent legislation, this court, though exercising right of independent examination, accords much consideration and respect to decision of state court construing state statutes involved. *Seton Hall College v. South Orange* . . . . . 100  
*Long Sault Development Co. v. Call* . . . . . 272  
*Detroit United Ry. v. Michigan* . . . . . 238

State construction accepted in testing constitutionality of state laws, and harmful constructions not anticipated. See **Constitutional Law**, II, III; **Jurisdiction**, II, (5).

**V. Findings of Fact.**

12. Conclusive effect of finding by judge who heard witnesses. *Adamson v. Gilliland*. . . . . 350
13. In absence of clear error, this court will not disturb concurrent findings of state courts upon mere sufficiency of evidence concerning negligence and assumption of risk in case under Employers' Liability Act. *Balt. & Ohio R. R. v. Whitacre* . . . . . 169
14. So as to finding that evidence of employment in interstate commerce was insufficient to go to jury. *Erie R. R. v. Welsh*. . . . . 303
15. Finding of District Court and Circuit Court of Appeals that parties to mortgage intended to defraud creditors in sense of Bankruptcy Act—followed. *Dean v. Davis* . . . . . 438

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**VI. Disposition of Moot Cases.**

16. Where agreements of domestic and foreign ship-owners, assailed under Anti-trust Act, were made moot by European War after suit begun, this court reversed, with direction to dismiss without prejudice. *United States v. American-Asiatic S. S. Co.* ..... 537

17. Where a suit to enjoin action under a state law became moot because of later state legislation, decree of injunction was reversed, with direction to dismiss. *Berry v. Davis* ..... 468

**VII. Certiorari.**

18. Writs of certiorari are subject to dismissal whenever court discovers they were granted under misapprehension. *Furness, Withy & Co. v. Yang-Tsze Ins. Assn* ..... 430

19. Duty of counsel on both sides to make plain the real situation. *Id.*

20. Petitions should be accurate, brief, clear, with proper references to record. *Id.*

**VIII. Mandamus.**

21. Mandamus, out of this court, is proper remedy for enforcing criminal sentence where District Court has defeated its execution by *ultra vires* order of suspension. *Ex parte United States*. ..... 27

22. The proceeding should be directed to District Judge, with view to annulment of order of suspension; not to clerk with view to issuance of commitment in spite of it. *Id.*

23. To meet ends of justice writ may be withheld till end of term. *Id.*

**IX. Prohibition.**

24. In prohibition to prevent enforcement of order of District Court alleged to be void, District Judge is respondent and parties interested in enforcing order can not be substituted. *Ex parte Indiana Transportation Co* ..... 281

**X. Advancing and Postponing Causes.**

25. Where decision in suit between State and individual would result practically in disposing of boundary suit between that

**PRACTICE AND PROCEDURE**—*Continued.*

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State and another State, the court reassigned former case for hearing with latter and made provision for advancing both or taking them on submission. *Cissna v. Tennessee* . . . . . 195

26. Under Rule 19, after case has been called and continued at previous term, consent of counsel will not suffice as ground for second continuance. *Hart Steel Co. v. Railroad Supply Co.* 609

**PREFERENCE.** See **Bankruptcy Act**, 5.

**PRESUMPTION:**

1. That interstate carrier is transacting its business right-fully. *New York Central &c. R. R. v. Beahm* . . . . . 148

2. Shippers presumed to know provisions of tariffs filed with Interstate Commerce Commission governing their shipments. *Western Transit Co. v. Leslie & Co.* . . . . . 448

3. In deciding constitutionality of state statute reposing in executive officer supervision over private business, presumed the officer will act not arbitrarily but according to duty. *Hall v. Geiger-Jones Co.* . . . . . 539

4. Contract under which gas company purchased its gas may be presumed in absence of other proof to measure company's expense for gas, in testing whether consumers' rate fixed by ordinance is reasonable, although the contract expired during trial. *Newark Natural Gas Co. v. Newark* . . . . . 405

5. In action on award of Interstate Commerce Commission, fact that evidence before Commission is not all before court will not necessarily justify presumption that award was justified by facts. *Pennsylvania R. R. v. Jacoby & Co.* . . . . . 89

**PRINCIPAL AND AGENT.** See **Partners; Indians**, 8; **Trusts**, 3.

**PRIVATE LAND CLAIMS.** See **Jurisdiction**, IV.

**PRIVILEGE:**

Of nonresident party to action from service of summons while in jurisdiction. *Stewart v. Ramsay* . . . . . 128

**PROHIBITION, WRIT OF.** See **Practice and Procedure**, 24.

**PROHIBITION:**

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Of intoxicating liquors. See *Clark Distilling Co. v. Western Maryland Ry.* . . . . . 311

**PROSTITUTION.** See *Caminetti v. United States* . . . . . 470

**PUBLICATION:**

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**PUBLIC LANDS.** See **Surveys**.

**PUNISHMENT:**

Suspension of. See **Criminal Law**, 1, 2.

**RAILROADS.** See **Carriers**; **Constitutional Law**, 81, 82, 84, 86, 87; **Franchise**; **Interstate Commerce Acts**; **Taxation**.

**RATES:**

Gas rates, fixed by ordinance. See **Constitutional Law**, 69; **Presumption**, 4.

Transportation rates. See **Interstate Commerce Acts**, 1, 12-16, 26, 35; **Carriers**, 9.

**REPORTS OF CONGRESS.** See **Statutes**, 11-13.

**RESCISSION.** See **Contracts**, 2.

**RES JUDICATA.** See **Judgments**; **Criminal Law**, 7, 8.

**RETROACTIVE LAWS:**

By judicial construction. See **Constitutional Law**, 62.

**RULE OF PROPERTY:**

Effect of unexpected construction of state statute. See **Constitutional Law**, 63.

**SAFETY APPLIANCE ACT:**

1. When couplers fail to couple automatically on straight track because of lateral play of drawheads, jury may properly infer such a degree of play unnecessary and violative of Safety Appliance Act, in absence of satisfactory explanation.

*Atlantic City R. R. v. Parker* . . . . . 57

**SAFETY APPLIANCE ACT:—Continued.**

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2. The case is not different where failure to couple occurs on a curve if effect of curvature may have been negligible. *Id.*

3. Section 2 of supplementary Act of Apr. 14, 1910, requiring carriers to equip cars with secure running-boards, ladders, and hand-holds or grab-irons, became effective July 1, 1911. *Illinois Central R. R. v. Williams* ..... 462

4. Purpose of § 3 is to standardize appliances required by § 2, and purpose of the proviso is to confer authority on Interstate Commerce Commission to extend time within which carriers may conform to established standards, but it does not authorize Commission to change date upon which § 2 became effective. *Id.*

**SAVINGS BANKS:**

Garnishment of deposits holds subsequently accruing dividends. *Savings Bank of Danbury v. Loewe* ..... 357

**SELF-INCRIMINATION.** See **Constitutional Law**, 52.

**SENTENCE:**

On power of federal courts over. *Ex parte United States* ..... 27

**SERVICE, OF PROCESS:**

Privilege of nonresident party to action from service while in jurisdiction attending trial. *Stewart v. Ramsay* ..... 128

Invalidity of service by publication as against nonresident. *Baker v. Baker, Eccles & Co.* ..... 394

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**STATES:**

State powers. See **Constitutional Law**; **Interstate Commerce Acts**; **Taxation**.

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**STATUTES:**

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**Commerce Acts; Naturalization Act; Safety Appliance Act; White Slave Traffic Act.**

Enjoining execution. See **Injunction**, 2, 3.

**I. Principles of Construction.**

1. When the language is plain and does not lead to absurd results no construction allowable and courts must enforce. *Caminetti v. United States*..... 470
2. Common meaning of statutory words accepted unless contrary reason appears. *Id.*
3. Plain meaning of statute not to be overridden by a name by which, it provides, it shall be known. *Id.*
4. In construing a penal provision, the court will be slow to attribute to Congress intention to exact punishment which the Government itself has conceded would be greatly disproportionate to offense. *United States v. Northern Pacific Ry.*.. 190
5. Statutes should be construed, if possible, so that their requirements shall be apparent in their own terms rather than dependent upon discretion of executive officers. *Id.*
6. A grantee of a franchise can not be compelled to suffer the ills of a strict construction in one aspect without being allowed the benefits necessarily flowing from strict construction in other aspects. *Detroit United Ry. v. Michigan*..... 238
7. Rule of strict construction applies peculiarly where franchises are set up as limitation on federal power over commerce. *Louisville Bridge Co. v. United States*..... 409
8. In construing federal grants of bridge franchises, Congress will be presumed to have intended to preserve its power to make future adjustments to fit commercial development. *Id.*
9. Statutory tax exemptions strictly construed. *Seton Hall College v. South Orange*..... 100
10. The meaning which this court had attributed to the words "any other immoral purpose" as used in the act concerning importation of alien women, Feb. 20, 1907, Congress must be presumed to have known when it employed the same words in a similar association in the White Slave Traffic Act. *Caminetti v. United States* . . . . . 470

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11. The reports of congressional committees may be resorted to by courts when legislation to which they relate is doubtful and requires interpretation. *Id.*
12. In construing Interstate Commerce Acts, much weight attached to construction early placed by Commission on Act of 1887 and to explanation made to Congress by Commission concerning occasion and scope of Act of 1906, which, in part, it drafted. *United States v. Pennsylvania R. R.* . . . . . 208
13. The Commission having in part drafted and recommended the Interstate Commerce Act of 1906, the court feels justified in presuming that Congress by those parts did not intend to exceed the recommendation. *Id.*
14. The absence of express reservation of right to alter or repeal has not the same significance in acts of Congress as in state legislation. *Louisville Bridge Co. v. United States.* . . . . 409
15. State laws may be tested constitutionally on the constructions placed upon them by the state court. *Chaloner v. Sherman.* . . . . . 455  
See **Constitutional Law, III.**

**II. Particular Statutes and Ordinances.**

16. The general bridge act of Mar. 3, 1899, repealed or modified Acts of 1862 and 1865 under which the Louisville Bridge was constructed. *Louisville Bridge Co. v. United States.* . . . . 409
17. The franchises granted Louisville Bridge Company by Acts of 1862 and 1865 held subject to changes requiring alterations of bridge without compensation. *Id.*
18. The "Webb-Kenyon Act" of Mar. 1, 1913, was intended to give effect to state laws prohibiting introduction of intoxicating liquors for personal use and forbids interstate shipments violating such prohibitions. *Clark Distilling Co. v. Western Maryland Ry.* . . . . . 311
19. Ordinances of Detroit requiring street railway to carry passengers at reduced rates "over any of its lines in said city" and "over the entire route of said company," held, not intended to include prospectively lines which company might afterwards own within subsequent additions to city. *Detroit United Ry. v. Michigan.* . . . . . 238



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20. A special act of New Jersey granting tax exemption to a college, *held*, subject to power of repeal reserved by legislature in prior general act. *Seton Hall College v. South Orange* . . . . . 100

21. West Virginia prohibition law of February, 1913, as amended, prohibits bringing into State by carriers of intoxicating liquors intended for personal use and receipt and possession of such liquors, so introduced, for personal use. *Clark Distilling Co. v. Western Maryland Ry* . . . . . 311

22. West Virginia Act of 1881, in declaring that "railroads" shall be public highways "free to all persons for the transportation of their persons and property," embraces branch line constructed and operated under it, and imposes on carrier with respect to such line continuing franchise obligation to transport passengers as well as freight. *Ches. & Ohio Ry. v. Public Service Comm* . . . . . 603

23. Section 3 of Michigan "Blue Sky" Law, which exempts securities "listed in any standard manual of information" approved by the securities commission, *held*, not to render the act unduly discriminatory or involve unlawful delegation of power. *Merrick v. Halsey & Co.* . . . . . 568

24. The act complies with the requirement of the Michigan constitution that no law shall embrace more than one object, which shall be expressed in its title. *Id.*

25. Its purpose is to protect investors in securities not from financial loss generally but from fraud. *Id.*

26. By Indiana Railway Law of May 11, 1852, railroads constructed under it are under continuing obligation, at their own expense, to accommodate their roads and bridges to drainage canals, etc., made under the Drainage Law of Mar. 11, 1907. *Lake Shore &c. Ry. v. Clough* . . . . . 375

**STOCKS:**

Right of State to regulate floating of and dealing in securities.  
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**STREET RAILROADS:**

Protection of franchise right to fares against impairment by later law. *Detroit United Ry. v. Michigan* . . . . . 238  
Construction of laws and ordinances as to fares. *Id.*

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**SWITCHING:**

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**TAXATION. See Corporation Tax Act.**

Burdening interstate commerce. See **Constitutional Law**, 29.

1. Power of State to impose fees for maintenance of roads used by resident and nonresident automobile owners. *Kane v. New Jersey* . . . . . 160

2. State may tax foreign corporations for privilege of doing business at different rate than that which she applies to her own corporations in taxing franchises by which she creates them. *Kansas City &c. R. R. v. Stiles* . . . . . 111

3. While State may not tax property beyond her borders, she may measure a franchise tax within her authority by capital stock which stands in part for property beyond her taxing power. *Id.*

4. Exemption from taxation must be shown in language not otherwise reasonably construed, and all doubts must be resolved in favor of State. *Seton Hall College v. South Orange*.. 100

**TERMINAL FACILITIES:**

Of railroads. What amounts to joint ownership of. *Louis. & Nash. R. R. v. United States*..... 60

**TERRITORIAL COURTS, HAWAII AND PORTO RICO. See Jurisdiction, 13.****TICKET. Stipulations. See Carriers, 4.****TRUSTS:**

1. Section 2091, Wisconsin Stats., 1913, providing that conveyances made by trustees in contravention of express trusts

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shall be absolutely void, does not apply to personal property. PAGE  
*Williams v. Cobb.* ..... 307

See **Executors and Administrators.**

2. A bill seeking to impress trust upon personal property of bankrupt's estate, claimed to represent moneys procured by fraud, must trace such moneys by adequate averments into specific property sought to be affected. *Knauth, Nachod & Kuhne v. Latham & Co.* ..... 426

3. It is constructive fraud for member of "syndicate," formed to buy up shares of a corporation, when acting for other members in the purchase, secretly to turn in shares of his own, applying them on his subscription to the "syndicate." *Sim v. Edenborn.* ..... 131

**UNIFORMITY:**

A regulation is uniform which applies uniformly to the conditions which call it into play. *Clark Distilling Co. v. Western Maryland Ry.* ..... 311  
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**WATER RIGHTS:**

Under laws of Colorado a suit by a claimant of water right in one water district to contest priority defined by general adjudication in another, is barred if not brought within four years from rendition of decree. *O'Neil v. Irrigation Co.* . . . . 20

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